Academy of Motion Pictures Arts and Sciences v. Ampas.com Doc. 8 Att. 1

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August 10, 2005

VIA MAIL & ELECTRONIC MAIL

Mr. Lin ZanSong
1688 RM RD.
Wenzhou, Zhejiang
China 325000

Infringement of A.M.P.A.S.® Mark

Dear Mr. ZanSong:

We are counsel to the Academy of Motion Picture Arts and Sciences (the "Academy"). We are writing with regard to your registration and use of the domain name AMPAS.COM.

Please be advised that the commercial use of the A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks is impermissible. As you are undoubtedly aware, the Academy annually confers copies of its Academy Award of Merit, popularly known to the public as the "Oscar," to persons who make outstanding contributions in the motion picture industry. The A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks have come to symbolize the most outstanding achievements in motion picture-making. As a result of the long and continuous use of its A.M.P.A.S.®, ACADEMY AWARD®, ACADEMY AWARDS® marks in conjunction with its products and services, the Academy has gained valuable goodwill and a strong customer recognition in these trademarks throughout the world. To protect these valuable rights, the Academy has obtained a federal trademark registration for its A.M.P.A.S.®, word mark pursuant to Certificate of Registration No. 2,166,918, and for its ACADEMY AWARDS® word mark in China pursuant to Certificate of Registration No. 94,014,541.

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ALL-STATE LEGAL® PLAINTIFF'S EXHIBIT A

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We would further like to advise you of the Uniform Dispute Resolution Policy ("UDRP") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") to govern .com, .net, .org, .biz, and .info domain name disputes in the U.S. and abroad. The UDRP provides for binding arbitration which can order the transfer or deletion of an infringing domain name registration.

The UDRP enumerates the following three elements to determine whether a domain name is infringing: (1) that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (2) that the domain name registrant has no rights or legitimate interests in respect to the domain name; and (3) that the domain name has been registered and is being used in bad faith. The UDRP sets forth the following nonexclusive factors which show use in bad faith: (a) where the domain name was registered or acquired for the purpose of extracting payment from the trademark owner or its competitors in excess of the costs associated with registering or acquiring the domain name; (b) the domain name was registered in order to prevent the trademark owner from being able to use it as a domain name; (c) the domain name was registered for the purpose of disrupting the business of a competitor; or (d) the domain name registrant has used the domain name to divert commercial traffic to its website by creating a likelihood of confusion among Internet users.

In light of the strength of the Academy's mark and the fact that you have no intellectual property rights in AMPAS.COM, no right to use the domain name commercially, and its use is likely to confuse visitors searching the Academy's site, it is likely that a court would find that AMPAS.COM was registered with a bad faith intent to profit.

The Academy may also bring suit in the U.S. under the of the Anticybersquatting Consumer Protection Act[1] (the "Act"). It provides for the transfer or deletion of domain names registered or used with a bad faith intent to profit from a distinctive or famous trademark.

The Act enumerates nine factors to consider in determining whether a registrant has a bad faith intent to profit from a mark. The factors a court may consider include: (1) whether the registrant has trademark or other intellectual property rights in the domain name; (2) the extent to which the domain name consists of the legal name of the registrant; (3) whether the registrant has made prior use of the domain name in connection with the bona fide offering of any goods or services; (4) whether the registrant has made bona fide noncommercial or fair use of the name; (5) whether the registrant intended to divert customers from the mark owner's online location for commercial gain or with intent to tarnish or disparage the mark; (6) whether the registrant has offered to transfer, sell, or otherwise assign the domain name for financial gain; (7) whether the registrant provided materially misleading or false contact information; (8) whether the registrant has registered multiple domain names which it knows are identical or confusingly similar to famous or distinctive marks; and (9) the extent to which the mark incorporated in the domain name is or is not distinctive or famous.

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[1] See 15 U.S.C. 1125(d) (2002).

Because you have no right to use the domain name commercially, it is likely that a court would find that AMPAS.COM was registered with a bad faith intent to profit.

Based on the foregoing, the Academy must request that you provide us with your written assurance that you will immediately (1) transfer your registration for AMPAS.COM to the Academy and provide us a copy of the transfer request; (2) halt construction of any and all Web sites incorporating the Academy's marks or any colorable imitations thereof; (3) refrain from registering or using the Academy's trademarks, or any colorable imitations thereof, as domain names; and (4) refrain from selling, transferring, or otherwise distributing tickets to any Academy Awards presentations.

Unless we receive your written agreement to the foregoing within fourteen (14) days, the Academy will have no choice but to pursue its legal remedies. Please contact us promptly to resolve this matter.

Very truly yours,

David W. Quinto

DWQ/bt
03848/672397.1

cc: Bruce Davis
Ric Robertson
Scott Miller, Esq.

NetworkSolutions. Login Your cart is empty

WHOIS Search Results

WHOIS Record For

ampas.com
Services from Network Solutions:

- Certified Offer Service - Let us help you get this domain name!
- Backorder - Try to get this name when it becomes available.
- SSL Certificates - Get peace of mind with a secure certificate.

The Data in OnlineNIC's WHOIS database is provided by OnlineNIC for information purposes, and to assist persons in obtaining information about or related to a domain name registration record. OnlineNIC does not guarantee its accuracy. By starting a WHOIS query, you agree that you will use this Data only for lawful purposes and that, under no circumstances will you use this Data to:
(1)allow, enable, or otherwise support the transmission of mass unsolicited,commercial advertising or solicitations via e-mail(spam).
(2)enable high volume,automated, electronic processes that apply to OnlineNIC Inc.(or its systems).

OnlineNIC reserves the right to modify these terms at any time.
By starting this query, you agree to abide by this policy.

Registrant:
Lin ZanSong

,,

Domain Name:ampas.com
Record last updated at 2005-10-08 02:51:39
Record created on 2002/3/24
Record expired on 2006/3/24

Domain servers in listed order:
ns1.proredirect.com ns2.proredirect.com

Administrator:
name: Lin ZanSong
mail: master@21cn.net tel: 86 577 62580998
org: Lin ZanSong

address: 1688 RM RD.
city: wenzhou
,province:
,country: China
postcode:

Technical Contactor:
name: Lin ZanSong
mail: master@21cn.net tel: 86 577 62580998
org: Lin ZanSong

address: 1688 RM RD.
city: wenzhou
,province:
,country: China
postcode:

Billing Contactor:
name: Lin ZanSong
mail: master@21cn.net tel: 86 577 62580998
org: Lin ZanSong

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Maximize Results from your E-Commerce Store: Download our *8 Steps to Successful Selling Online*

Search

Go

BUY THE AVAILABLE EXTENSIONS FOR THIS DOMAIN NAME

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ampas	☑ .tv
ampas	☑ .us
ampas	☑ .cc

ALL-STATE LEGAL® PLAINTIFF'S EXHIBIT B

address: 1688 RM RD.
city: wenzhou
,province: Zhejiang
,country: China
postcode: 325000

The previous information has been obtained either directly from the registrant or a registrar of the domain name other than Network Solutions. Network Solutions, therefore, does not guarantee its accuracy or completeness.

Show underlying registry data for this record

Current Registrar:	ONLINENIC, INC.
IP Address:	204.13.161.23 (ARIN & RIPE IP search)
IP Location:	US(UNITED STATES)-CALIFORNIA-LOS ANGELES
Record Type:	Domain Name
Server Type:	Other
Lock Status:	clientDeleteProhibited
Web Site Status:	Active
DMOZ	no listings
Y! Directory:	see listings
Secure:	No
E-commerce:	No
Traffic Ranking:	Not available
Data as of:	30-Mar-2006

your domain name registration be included in a public database known as WHOIS. To learn about actions you can take to protect your WHOIS information visit www.internetprivacyadvocate.org.

NOTICE AND TERMS OF USE: You are not authorized to access or query our WHOIS database through the use of high-volume, automated, electronic processes or for the purpose or purposes of using the data in any manner that violates these terms of use. The Data in Network Solutions' WHOIS database is provided by Network Solutions for information purposes only, and to assist persons in obtaining information about or related to a domain name registration record. Network Solutions does not guarantee its accuracy. By submitting a WHOIS query, you agree to abide by the following terms of use: You agree that you may use this Data only for lawful purposes and that under no circumstances will you use this Data to: (1) allow, enable, or otherwise support the transmission of mass unsolicited, commercial advertising or solicitations via direct mail, e-mail, telephone, or facsimile; or (2) enable high volume, automated, electronic processes that apply to Network Solutions (or its computer systems). The compilation, repackaging, dissemination or other use of this Data is expressly prohibited without the prior written consent of Network Solutions. You agree not to use high-volume, automated, electronic processes to access or query the WHOIS database. Network Solutions reserves all rights and remedies it now has or may have in the future, including, but not limited to, the right to terminate your access to the WHOIS database in its sole discretion, for any violations by you of these terms of use, including without limitation, for excessive querying of the WHOIS database or for failure to otherwise abide by these terms of use. Network Solutions reserves the right to modify these terms at any time.

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ampas	☑ .tc
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SEARCH AGAIN

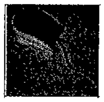
Enter a search term:

e.g. networksolutions.com

Search by:

- ◉ Domain Name
- ○ NIC Handle
- ○ IP Address

Search »



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